4. CHAPTER FOUR

4.0 LEGAL REGIMES AFFECTING TAXATION IN TANZANIA

4.1 LEGAL FRAMEWORK OF TAXATION IN TANZANIA

Tax is a compulsory monetary contribution charged or levied by a government tax authority on a product, income or activity.[1] The operation of taxes, its influence, and relationship to the society is largely driven by the legal framework.[2]

Odd-Helde Fjeldstad[3] has pointed out that, there are three propositions affecting taxation in Tanzania, including tax collection by local authorities. The first proposition is that, the revenue performance depends on the degree of coercion involved in tax enforcement. In this proposition, it is stated that, the reciprocity does not seem to be an inherent component of the state society relationship in connection with local government taxation.[4]

The second proposition is that, the extent of coercion depends on the bargaining powers of the stakeholders involved in the tax enforcement process. This means that, the coercive tax enforcement is highly facilitated at the time when the bargaining powers with respect to tax collection favour the administration of the council, and when the elected councillors have no direct influence on collection. The third proposition is that, the presence of donors in a local authority might be crucial by changing the balance of power in favour of the council administration, with implications for democratic development, accountability and responsiveness.[5]

The three propositions are among the important legal regime determinants that explain the reasons on wider spread differences in revenue performance between local

[1] Definition, *tax*, (2017), *available at* http://www.investorwords.com/4879/tax.html (Last visited on February 9, 2017).
[2] O.H. Fjeldstad, *Taxation, coercion and donors: local government tax enforcement in Tanzania,* 39 (2) THE JOURNAL OF MODERN AFRICAN STUDIES 1-3, 1 (2000), *available at* https://www.cambridge.org/core/journals/journal-of-modern-african-studies/article/div-classtitletaxation-coercion-and-donors-local-government-tax-enforcement-in-tanzania-div/D32A0330E5FB54A82A8251A92A8A74F5 (Last visited on February 17, 2017).
[3] *Id*.
[4] *Id*.
[5] *Id*.

authorities in the United Republic of Tanzania.[6] Therefore, an endeavour is made to examine the potentials legal regime determinants affecting taxation in Tanzania.

Besides, the taxation system in Tanzania operated by two legal regimes (O.H. Fjeldstad and J. Semboja, 2001).[7] These are the legal regime of the central government and the legal regime of the local government.[8] The local taxes imposed by Local Government Authorities tax regime are considerably most significant in terms of economic, social and political impacts compared by the tax levied by the central government via the Tanzania tax institutions Tanzania Revenue Authority and Zanzibar Revenue Board.[9].

Despite of the larger number of the local taxes, they are unsatisfactory in nature for both central and local government to run their recurrent and development expenditures.[10] This means that, in spite of its positive significance and impact to the country, its revenue figure indicates contrary from the needs and requirements of Tanzania. Moreover, there are a lot of weaknesses facing the taxation system in the country, where there is the considerable options for reforms are prerequisites for fiscal success of the nation.[11]

Furthermore, the Constitution of Tanzania has promoted decentralization, however, there are divisions of opinions on whether the real devolution of authority from centralization legal regime to the decentralization of local government regime, specifically in promoting domestic tax collection has occurred.[12] Example, A.T. Kessy and W.Mc. Court[13] highlighted that, however, the Local Government Reform Program in Tanzania has led to significant devolution of resources and authority, but the objectives of the Local Government Reform Program have not yet been realized.

This is because, there is persisting in deficits capacity, political and institutional constraints and much dependence on the central government.[14] This means that, the

[6] *Id*.
[7] *Supra* note 322.
[8] *Id*.
[9] *Id*.
[10] *Id*.
[11] *Id*.
[12] *Supra* note 364.
[13] *Id*.
[14] *Id*.

achievements of the Local Government Reform Program have not been achieved out of the ambitions and intentions of the reformers in the country.[15]

According to this situation, there is urgent need that, the politicians must translate into identifying and dealing with the mentioned subtle and stubborn constraints so as to tackles the contradiction between a new devolved structure and a persisting deconcentrated structure, so that, the decentralization based on the reformer's intentions could reach the logical conclusion in Tanzania.[16] Based on these findings, the Tanzania decentralization of local government regime founded among other purposes is for political willing.[17]

However, the Constitution of Tanzania has promoted the local government decentralization in the land, the recently domestic tax revenue collected from the authorities should be bestowed to them instead of shifting to the central government. This would remove much dependence from the central government and persisting in deficits in the country.[18] Also, the politicians must focus on the implementation of the nation's planned priorities rather than parties and self-interest for the purpose of avoiding fraud, corruption and embezzlement of public finance in Tanzania, please refer chapter seven on the others suggestions.[19]

These contributions and measures towards the strengthening of internal factors would assist in running recurrent and development expenditures within the country, rather than depending from external factors and finances like loans, aids, and grants.

Another legal regime affecting taxation in Tanzania is regulatory framework of mining sector in the country. In Tanzania, a mining sector is currently guided by the Mining Policy of 2009 and the Mining Act of 2010 (International Centre for Tax and Development, 2012).[20] According to this report by T.K. Muganyizi and the Tanzania Revenue Authority,

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[15] *Id*.
[16] *Id*.
[17] *Id*.
[18] *Id*.
[19] *Id*.
[20] *Supra* note 136.

it is shown that, the Tanzania Mining Policy of 1997 acknowledged the fiscal document as a central tool for providing incentives to investors.[21]

During 1998, the Mining Act was approved by the Parliament of Tanzania, then, translated the policy into actionable operations.[22] By that time, the Act was very much generous since it was guided by the ideology which emphasized the active role of fiscal policy as an instrument of economic growth.[23]

Thus, the gold mining projects were exempted from corporate income tax, something that was not repealed until 2010.[24] This means that, the investors in mining sector from 100 percent capital expensing and a 15 percent threshold on unredeemed qualifying capital expenditure.[25] This means that, even at a 15 percent rate of return, the investors still did not pay corporate taxes.

For the time being, even V.A.T was characterized by multiple zero ratings. This means that, minerals were basically zero rated.[26] That was according to the destination V.A.T principle.[27] The major reason of zero rated V.A.T the mining was mainly produced for export.[28] It is reported that, V.A.T on capital goods was initially deferred but later exempted.[29]

Many of supplies of both goods and services to the mining investors were also benefited from tax relief.[30] Thus, it is another form of zero rating in Tanzania. In this regard, it is recommended under legal recommendations that, the legal regimes in mining sector in Tanzania must be strengthened by eliminating numbers of the duties, taxes relief and exemptions in the country. All these and others tax exemptions should be eliminated in the country.

[21] *Id*.
[22] *Id*.
[23] *Id*.
[24] *Id*.
[25] *Id*.
[26] *Id*.
[27] *Id*.
[28] *Id*.
[29] *Id*.
[30] *Id*.

There is an urgent necessity for the elimination of tax exemptions in Tanzania.[31] For example, Tanzania Investment Centre had had generated 39 percent of the total exemptions while mining exemptions accounted for about 7.5 percent.[32] Doing so, will enhance domestic tax revenue collections and performance in Tanzania.

Furthermore, the desire to provide a competitive tax policy for tax collection purposes was marginal and unpredictable, despite the policy to assign the government towards the role of collecting taxes, fees, royalties, duties and rental payments from the mining sector in Tanzania.[33] In this regard, the mining policy of 1997 provides zero chances in taxes collections in Tanzania.[34] In the other language, based from 1997 policy, the contribution of taxes was not proportional to the profits made by the mining companies during the period of 1997 to 2000s.[35]

It is also recommended that, the Income Tax Act 2004 must be reviewed so as to acquire the gains from off shore indirect transfers of interest from mineral assets.[36] Increasing of capacity building for the management of mining sector is also important.[37] The best example is innovation and installation of specialized revenue forecasting models.[38]

By then, in the year 2009, a new mining policy approved by the Parliament of Tanzania for the principal purpose of rectifying the anomalistic of the 1997 mining policy of the country. Fortunately, the new policy identified the opportunities for revised taxation and royalties in the country.[39] Hence, the new Mining Act came into force during November, 2010.[40] The Act smoothed the way for mainstreaming taxation of mineral production to align it with the Income Tax Act of 2004 and other laws of the country.[41]

[31] *Id*.
[32] *Id*.
[33] *Id,* at 9-10.
[34] *Id*.
[35] *Id*.
[36] *Id*.
[37] *Id*.
[38] *Id*.
[39] *Id*.
[40] *Id*.
[41] *Id*.

In addition to that, the Mining Act (2010) provided the basis for charging royalties by reviewing them from net back value to gross sales receipts.[42] According to the report, gold, silver, copper and platinum group minerals' royalty rate increased from 3 percent to 4 percent, while other minerals such as diamonds and gemstones, retained the 5 percent rate.[43] Moreover, the terms provided for in old contracts are still regarded with great respect within the interests of public accountability and good governance.[44]

In conclusion, it is reported that, there are differences between the two policies.[45] That is, under the policy of 1997, the minister of mines was empowered to enter into a development agreement with any company, while under the policy of 2009; the company itself must have invested capital of more than US$100 million.[46]

It is also said that, the laws, policies and institutional set up in the mining sector has not led to an equitable share for both the government and citizens of Tanzania.[47] In this regard, there were three key reviews that aimed at improving the contribution of the mineral sector towards the institutional capacity to oversee the sector and to the economy in totality, were undertaken so as to address this challenge of inequality.[48]

The first review was carried out in 2004 under the Mining Policy Review Committee. The committee was tasked with undertaking with an in-depth review of the regulatory framework and mineral policy of the country under the formation of the Prime Minister, the Honourable Frederick Sumaye during 2004.[49]

The Committee report was commonly known as the Kipokola Report which observed that, the organizational structure of the Minerals Division was inadequate to cope with a fast-growing sector.[50] In this regard, the Kipokola Report recommended that, Tanzania has to

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[42] *Id*.
[43] *Id*.
[44] *Id*.
[45] *Id,* at 13.
[46] *Id*.
[47] *Id,* at 13.
[48] *Id*.
[49] *Id*.
[50] *Id*.

learn from Botswana and Ghana[51] in managing its minerals resources. In this regard, the emphasized are on the need for honouring the mining contracts and the need for continuing monitoring of incentives to the mining sector in the nation.[52]

Moreover, it is suggested to the government to discuss with mining companies towards the need to revisit old contracts for the benefits of both parties.[53] Among the suggestions provided by the Committee Report was a concise revision of the excessive tax incentives such as 15 percent allowance on the tax exemptions on fuel, custom duties and on unredeemable qualifying capital expenditures.[54] The second review of mining development agreements and tax structure as known as the Masha report was made in 2006.[55] The Masha report also suggested a review of tax incentives and negotiations with mining companies.[56]

The third comprehensive review was undertaken in 2008 through a Presidential Mining Review Committee to recommend to the government on omission of the mining sector which was allotted in November, 2007.[57] The name of the report release in 2008 by the committee is commonly known as the Bomani Report.[58] Among other things, the report analysed the taxation system used in the mining sector, reviewed the government's oversight system in large mining activities and studies the mining contracts and other documents related to big mines.[59]

It is also found that, the tax incentives were overgenerous, the government's take or gain from the sector was inadequate and finally, the oversight system in place was

[51] The Kipokola Report observed that in Botswana, the Mineral Economic Unit under the Ministry of Minerals, Energy and Water Resources safeguards national interests through close monitoring of mining investments and operations, and for each draft mining contract, sets up a multi-disciplinary technical team to review it. In Ghana, under the Internal Revenue Authority, a special Petroleum and Mineral Unit keeps track of the costs of the big mines.
[52] *Id,* at 14.
[53] *Id*.
[54] *Id*.
[55] *Id*.
[56] *Id*.
[57] *Id*.
[58] *Id*.
[59] *Id*.

inadequate.[60] In this regard, the report reviewed the Mining Policy of 1997 and the Mining Act of 1998.

Apart from the reviewing of the two, the report also carefully considered that, the main obstacle towards the development of the sector was structural composition.[61] Hence, it suggested the government to take an equity share in large scale mining companies.[62] Thus, according to the paramount findings from the three reviews, it is concluded that, as far as the allocation, utilization and exploitation of the country's natural resources, there is no benefit the Tanzania gained from the sector.[63] Accordingly, one among the major reason of awkward situation was lack of the capacity to manage the monitoring and mistakes.[64]

In this regard, the same suggestion of building capacity within the government emphasized for the sector advancement. As far as these recommendations, in 2010, the new mining policy and mining Act were brought in to ground.[65]

4.2 MINING REVENUE

The Mining Act 2010, the Income Tax Act of 2004 and indirect taxation laws are the current fiscal regimes applicable to the mining sector in Tanzania (International Centre for Tax and Development, 2012).[66] The income taxes like Pay As You Earn, corporate tax, Special Skilled Levy, and withholding taxes, together with royalties, V.A.T and license fees are basic income components from mining activities.[67] Meanwhile, fees like royalties and license fees are administered by the Ministry of Energy and Minerals and local government authorities, while taxes are administered by Tanzania Revenue Authority.[68]

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[60] *Id*.
[61] *Id*.
[62] *Id.*
[63] *Id.*
[64] *Id*.
[65] *Id*.
[66] *Id,* at 17.
[67] *Id*.
[68] *Id*.

It is shown that, mining revenue, its taxes and fees in Tanzania is one among the potential legal regime sector affecting tax revenue performance in the country.[69] Hence, the followings are the explanations of the some of the basic income components of mining economic activities in Tanzania.

4.2.0 TAXES ON INCOME

Mining tax revenue in the country contributes an average of about 2.2 percent of total tax revenue collected by Tanzania Revenue Authority.[70] However, the sector has small share to the ratio of total G.D.P in the nation; the contribution of the sector to the tax revenue has increased basically to $71.6 million in 2010 from $2.1 million in 1999.

In Tanzania mining revenue contribute taxes on income.[71] The Corporate Income Tax, Pay As You Earn, Skills Development Levy, withholding taxes and rental taxes are among the income taxes collected by Tanzania Revenue Authority from the mining sector in the country.[72] Table 5.0[73] illustrates the taxes paid by the large-scale mining companies from the year 2005 to 2010.

Table 5.0: Taxes Paid by Large Scale Mining Companies from 2005 to 2010 ($m).

Year	2005	2006	2007	2008	2009	2010
Corporate Tax	3.9	1.6	1.9	1.6	2	15.3
Value Added Tax	1.6	0.7	5.7	1.7	3.2	3.4
Employment Taxes	14.6	29.9	45.7	49.5	45.2	45.6
Withholding Tax	2.9	6.2	4.9	4.5	5.4	7.1
Other	0	0.2	0.2	0.1	0.3	0.2
Total	**22.9**	**38.5**	**58.4**	**57.4**	**56.1**	**71.6**

N.B: Excludes non-tax revenue, such as mining lease, royalties and licensing fees.
Source: (I.C.T.D) Research Report 1, 2012.

The poor performance of the mining sector contributed by exemptions during the years 1997 to 2000s.[74] Example, one among the largest institution benefited from the tax exemptions was the Tanzania Investment Centre. The institution generated at about 39

[69] *Id*.
[70] *Id*.
[71] *Id,* at 20.
[72] *Id*.
[73] The table drafted by the I.C.T.D based from the data derived from the Tanzania Revenue Authority T.R.A.

[74] *Id*.

percent of the total exemptions while mining exemptions accounted for about 7.5 percent.[75]

V.A.T and taxes on fuels are among the indirect taxes imposed from mining sector in Tanzania. Hence, mining companies remain exempted from the import duties through out of their first year of production, similarly; it faces a capped 5 percent rate after the first year.[76] Also, the goods like capital goods remain exempted now days.[77]

The main contributor of the tax revenue from the sector is employment taxes.[78] Thus, taxes amounting to the average of 75 percent of tax payments.[79] Contrarily, the status of V.A.T is still remaining net V.A.T refund claimers of the large mining companies in the country.[80] However, the corporation tax continues to be paid and it is expected to be a productive revenue flow during the coming years.[81]

These findings imply that, the payments of royalties paid to the government by the major gold mines added up from $1.6 million to $40.5 million, from the year 1999 to 2010, respectively. Thus, royalties' payment remain the superior than the taxes.[82] In the other words, the sector of minerals in Tanzania has not actually started paying taxes to the country.[83] This means that, the legislative regimes from the mining sector in Tanzania count for significant importance to affect tax revenue performance in the country.[84]

Therefore, it is suggested that, Section 9 of the Income Tax Act 2004 which state that, the gains made on an investment are included in taxable income and the section 36 of the same that sets out how the gain is calculated.[85] They should be amended so as to capture the gains made during the transfers of shares of non-Tanzanian companies.[86]

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[75] *Id*.
[76] *Id*.
[77] *Id*.
[78] *Id*.
[79] *Id*.
[80] *Id*.
[81] *Id.*
[82] *Id*.
[83] *Id*.
[84] *Id*.
[85] *Id*.
[86] *Id*.

Thus, the Income Tax Act, 2004 must be reviewed so as to acquire the gains from the off shore indirect transfers of interest from mineral assets.[87] Also, increasing of capacity building for the management and advancement of the mining sector, for example the innovation and installation of specialized revenue forecasting models.[88]

4.2.1 USEFUL TAX RATES

In Tanzania the tax rates in the mining sector are well below the overall tax burden in the country, see Table 6.0.[89] It illustrates that, at amount of 8.2 percent, on average the effective tax rate, the sector generally contributes towards the employment taxes.

Moreover, despite the growth of the sector, the income tax regime applicable to the mining sector has not paid from the material corporate tax.[90] On the other hand, it shows that, on average, the mining sector's effective tax rates have been relatively stable while overall taxes have essentially risen.[91]

Table 6.0: Effective Tax Rates in the Mining Sector 2005-2010 (Million Shillings).

Year	2005	2006	2007	2008	2009	2010
Mining GDP	457,431	576,363	742,932	839,513	941,094	
Total Mining Tax	25,831	48,298	72,611	68,715	73,277	99,932
Effective Tax Rate	5.6	8.4	9.8	8.2	7.8	9.3
Tax Revenue/GDP Ratio	11.2	12.4	14.0	15.0	14.9	15.3

Source: (I.C.T.D) Research Report 1, 2012.

4.3 MINING TAX REGIME

Tanzania has made significant tax reforms in 1997 the time when the first mining policy was promulgated.[92] However, both legal and regulatory framework for mining sector

[87] *Id*.

[88] *Id*.

[89] The table drafted by the I.C.T.D based from the data derived from the Tanzania Revenue Authority T.R.A.

[90] *Id*.

[91] *Id*.

[92] *Id*, at 21.

activities can be traced since during the colonial period.[93] In this situation, the Mineral Policy of 1997 had necessitated the amendments towards the laws of taxations within the country so as to produce a mining taxation regime, which is different and distinct from the main taxes regime applicable in other sectors.[94] For instance, the Financial Laws Act of 1997 that undergo various amendments, the Finance Act of 1997 and other Government Notices and Orders provided the basic tools for enforcing a distinct regime applicable to the mining sector.[95]

The Acts and orders led to the establishment of the new tax structure that aligned the government's attempts to attract both local and foreign investors in to the mining sector with the principal targets of technology, capital and expertise advancement that was missing in the sector for a memorial timeframe.[96] The Mining Act of 1998 among other things provided more incentives to foreign investors relative from the 1979 Act.[97]

However, the later led to the new policy in 2009 and the new legal framework and hence, the Mineral Act of 2010 promulgated.[98] The targets of the new policy were among other things, to addresses the challenges encountering the sector, among them are slow development of small-scale mining, poor capacity of the government to administer the sector and environmental degradation, low integration with other sectors of the economy, and low comparable contribution to G.D.P with other sectors in the country.[99]

All these findings confirm that, mining sector has undergone the vast legal regimes in Tanzania. This is because; historically it was among the potential sector the nation had lost the potential tax revenues that might advance the country at the middle-income country on earth.

[93] *Id*.
[94] *Id*.
[95] *Id*.
[96] *Id*.
[97] *Id*.
[98] *Id*.
[99] *Id*.

In this regard, the government is advisable on strengthening the capacity building for the management and advancement of the mining sector in the country.[100] Hence, to boost the domestic tax revenue collections and performance in Tanzania.

4.4 THE NEW TAX REGIME

The Income Tax Act, Cap 322, the Mining Policy of 2009, the Mining Act 2010, the Customs (Management and Tariff) Act, Cap. 403 and the V.A.T Act, Cap 148, are the key legal frameworks affecting the mineral sector in Tanzania.[101]

4.4.0 INCOME TAX

At the new mines, the Income Tax Act, Cap 322 of 2004 replaced the previous 1973 Act and repealed all the privileged treatment approved to the mining sector with respect to withholding taxes[102], except, in case of the old mines, all benefits contracted under the earlier Act have been honoured.[103]

4.4.1 CORPORATE INCOME TAX

In Tanzania, as in the case of mining sector all sectors take 30 percent of the Corporate Income Tax rate.[104] However, there is a condition of being listed at the Dar es Salaam Stock Exchange for all companies that are taxed 25 percent and at the same time they are offering 30 percent or more equity to the public.[105] This condition is applicable to all other sectors in the country.[106] There are different terms of deductibility of expenses that are considered at the time of computing their taxable income.[107]

The first difference between mining sector and others sectors during the calculation of their taxable income fall under the area of depreciation of assets. This means that, the assets in mining sector, however they fit into the same categories of assets depreciation scheme under the Income Tax Act 2004, they have not been modified to abide with this

[100] *Id*.
[101] *Id*.
[102] *Id*.
[103] *Id.*
[104] *Id*, at 22.
[105] *Id.*
[106] *Id.*
[107] *Id.*

structure. Instead, all assets in the mining sector in Tanzania are expensed at 100 percent capital expensing, and then accompanied by a 15 percent boost up on unredeemed qualifying capital expenditure.[108]

The Corporate Income Tax rate relevant to the mining sector has only remained a 'book rate' with little realistic for usage.[109] In addition, the new contracts are not questionable to this scheme.[110] Meanwhile, the mining companies have the potential opportunity to enjoy the scheme regardless of the minister's responsible to the sector empowered to sign the Mining Development Agreements using fiscal stabilization clauses.[111]

4.4.2 VALUE ADDED TAX

It is like other countries, V.A.T system in Tanzania refer to the credit invoice consumption tax which is implemented on a destination principle.[112] In the country, V.A.T regime is a single rate regime, whose initially was set at 20 percent, however, in July 1, 2009 the rate was reduced to 18 percent.[113] Also, all the minerals that are mined in Tanzania are entirely exported to generate foreign currency to combat poverty in the country.[114]

Poverty is still a major problem in the country where it is evidenced, however, a lot of measures have been undertaken by the government in the budget year 2017-2018 to ensure attainment of the goal.[115] Among the measure is to strengthen the tax administration, compliance, and enhancement of the expenditure management in line with the Budget Act, 2015.[116] Similarly, the government had issued the Blueprint for Regulatory Reforms. That is for the purpose of improving the business environment, including the legal and regulatory framework.[117]

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[108] Development expenditure is the qualifying capital expenditure. In Tanzania, the provision gives priority to the companies in that, in addition to 100 percent capital expensing, the company adds further 15 percent as allowable expense on its development expenditure which not recovered by return to investments.
[109] *Id.*
[110] *Id.*
[111] *Id.*
[112] *Id.*
[113] *Supra* note 148.
[114] *Supra* note 136, at 25.
[115] *Supra* note **269**, at 19.
[116] *Id.*
[117] *Id.*

Moreover, the mining firms are net-refund claimers of virtually all V.A.T paid in the process of mining operations.[118] This is because in Tanzania exports are V.A.T zero rated tax according to the V.A.T regime.[119] In addition to that, due to the competitive business environment and the hunger of mining investors in the country, a special unit has been created by tax administration so as to handle mining companies for the sake of avoiding inconveniences and delays linked with refunds from V.A.T.[120]

Also, since 1998 the V.A.T system of Tanzania was stable, but was complex especially in mining sector.[121] Example, while imports by or supply to a registered licensed exploration, mineral assaying, drilling, prospecting or mining company are eligible for V.A.T relief, the supply of capital goods is also V.A.T relieved.[122] The exportation of minerals is zero-rated.[123] This is according to the guiding principles that led mineral sector in Tanzania.[124]

In Tanzania, exports are zero-rated while mining projects are expected to export most of their output to abroad.[125]Meanwhile, companies with a Mining Development Agreement signed before July 1, 2009 will still enjoy the same V.A.T relief as before the reforms.[126]

Table 7.0[127] Annexure VA, summarise the key reforms undertaken in the mining tax regime since the advances of large-scale mining operations. It illustrates the comparisons among the fiscal regimes during the three phases started in 1998, when the Mining Act and the V.A.T Act came into force.

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[118] *Id,* at 25-26.
[119] *Id.*
[120] *Id.*
[121] *Id.*
[122] *Id.*
[123] *Id.*
[124] *Id.*
[125] *Id.*
[126] *Id.*
[127] The table drafted by the I.C.T.D based from the data derived from the International Monetary Fund I.M.F in the year 2011, Tax Laws.

The landmark reform during the second phase started in 2004, where the new Income Tax Act was introduced. Finally, the third phase started in 2010 which is defined by the enactment of the new Mining Act, 2010.[128]

4.5 <u>RECOMMENDATIONS</u>

4.5.0 POSSIBLE POLICY INTERVENTION AREAS

It is observed that, the binding agreements between the government and the mining companies were signed before the tax reforms regardless of the long-term extraction of the Tanzania's bulks of minerals.[129] This means that, the legal reviews, tax law reviews, mining policy, mining Act and others have had limited impact in the sector.

This situation led the government to be the good will of the mining companies despite its principal roles of ensuring good governance and public accountability.[130] The negotiations between the government and mining companies to amend existing contracts must continue so as to health the future fiscal revenue of the nation for the benefits of current and hereafter generations.[131] In these regards, the following possible areas of interventions have been suggested to be work on:

a) To make adjustments in existing Mining Development Agreements so that, the government could secure its fair share from the mining undertakings as a result of mainstreaming the V.A.T system relevant to the mining companies; mainstreaming the payment of royalty and withholding taxes scheme; plus, renegotiating excise and fuel levy exemptions.
b) To capture extra funds to the government by allowing the progressive royalties, special mining taxes or resource rent.
c) To favour of pooled assets expensing as noted in the Income Tax Act 2004 instead of the 100 percent capital expensing system.

[128] *Id.*
[129] *Id,* at 32.
[130] *Id.*
[131] *Id.*

d) In order to acquire the gains from the off shore indirect transfers of interest from mineral assets, the Income Tax Act must be reviewed.
e) To increase capacity building for management of the sector. The best example is innovation and installation of specialized revenue forecasting models.
f) To nullify Section 145 of the I.T.A 2004 this allows a transitional arrangement and midway for taxing the mining industry.[132]

4.6 THE INCOME TAX ACT

Chapter 332 of the Act state that, it is *"An Act to make provision for the charge, assessment and collection of Income Tax, for the ascertainment of the income to be charged and for matters incidental thereto".*[133] This mean that, the Act provides the provisions on how the income tax are dealt with, for the purpose of finding out the income to be charged and others related matters. It is the union Act applied to both Tanzania Mainland and Tanzania Zanzibar.[134]

4.6.1 IMPOSITION OF INCOME TAX ACT: CHARGING SECTION

Part II section 4.-(1) of the Act make an imposition of the taxes to be charged stating that, the tax shall be imposed and payable in accordance with the procedure in Part VII for each year of income by every person:

(a) who has overall income for the year of income or is a corporation which has a continuous unrelieved loss determined under Section 19 for the year of income and the previous two successive years of income,
(b) who has an inland permanent establishment that has sent income back to their own country for the year of income,
(c) or who receives an ultimate withholding payment during the year of income.[135]

[132] *Id.*
[133] *CAP 332 (R.E 2014),* The Income Tax Act, 2004.
[134] Sec. 2, The Income Tax Act, 2004.
[135] Sec. 4.-(1)(a)(b)(c), The Income Tax Act No.13 of 2008 s.14 and Act No.8 of 2012 s.20.

According to subsection (1)(b) the income tax payable by a person is calculated under the rate of income tax cited in paragraph 3(3) of the First Schedule only toward the repatriated income established permanently in that year of income.[136]
However, the income tax payable by a person regarding subsection (1)(c) is equivalent to the sum of the amounts calculated by applying the relevant rates of income tax determined under paragraph 4 of the First Schedule to the amount of each final withholding payment received by the person during the year of income, subject to the provisions of section 86(4).[137]

For corporations having continuous unrelieved loss for three successive years of income under paragraph (a) of subsection (1), its income tax payable excludes the corporations under agricultural business, health or education in Tanzania.[138]
These sectors have excluded from the income tax payable due to their significances to the common people and the general public in totality.

4.6.2 INCOME TAX BASE: CALCULATING THE INCOME TAX BASE

4.6.2.0 Total Income

The calculation of total income of a person from income tax base according to the Tanzanian Income Tax Act 2004 has explained in Part III: Division I-Subdivision A of the Act is equal to the sum of the person's chargeable income for the year of income from each engagement of employment, business and investment minus any reduction allowed for the year of income under section 61 concerning with retirement contributions to approved retirement funds. For the year of income, the total income of each person will be separately calculated.[139]

This provision of computing total income of each person separately, will keep government to be in a good position to generate more domestic revenue. Therefore, finance herself

[136] Sec. 4.-(6), The Income Tax Act, 2004.
[137] Sec. 4.-(7), The Income Tax Act, 2004.
[138] Sec. 4.-(8), The Income Tax Act No.13 of 2008s.14.
[139] Sec. 5.-(1)(2), The Income Tax Act, 2004.

recurrent and development expenditures and for the better services to the Tanzanians citizens.

4.6.2.1 Chargeable Income

For a year of income, the Act has categorized the chargeable income of a person from any employment, business or investment regarding whether a resident person, a non-resident person or a resident corporation in which:

(a) In the former, the chargeable income is equal to the person's income from employment, business or investment irrespective of the source of the income.
(b) For the situation of a non-resident person, it is equal to the person's income from the employment, business or investment if and only if that income has a source in Tanzania for that year of income.
(c) For the latter case, if a resident corporation has perpetual unrelieved looses referred to in subsection 1(a) of section 4, relating to the turnover of such corporation for a year of income.

Nevertheless, for any resident individual whom at the end of a year of income has been resident in Tanzania for two years or less in total during the whole of the individual's life shall be determined under subsection (1)(b) of the Act.[140]

4.6.2.2 Income from an Employment

Besides, an individual's income from an employment for a year of income is equal to the individual's gains or profits from the employment of the individual for the year of income. The calculations of an individual's gains or profits from an employment for a year of income, with the respect of the provisions of subsection (3), (4) and (5) must include the following payments:

(a) payments of salary, wages, commissions, payment in lieu of leave, fees, bonuses, gratuity or any survival travelling entertainment or other allowance received in regard of employment or service rendered,

[140] Sec. 6.-(1)(a)(b)(c),(2), The Income Tax Act, 2004.

(b) payments in case of any discharge or reimbursement of expenditure incurred by the individual or any person associating with the individual,

(c) payments relating the individual's contract to any conditions of the employment,

(d) retirement contributions and retirement payments,

(e) payment aimed at redundancy, loss or employment termination,

(f) other payment made due to the employment like benefits in kind quantified in accordance with section 27,

(g) any other amounts as may be required to be included under Division II of this part.

(h) annual director's payments payable to a director which is not a full-time service director.[141]

However, the following are excluded upon calculating an individual's profits or gains from an employment:

(a) any amounts exempted plus the ultimate withholding payments,

(b) any services from the premises cafeteria that rendering services on a non-discriminatory basis,

(c) medical services, payment for medical services, and payments for insurance for medical services under condition that the payments or services are:

> (i) available only for medical treatment of the individual, spouse of the individual and up to four of their children, and
>
> (ii) provided by the employer or any employer's assistant engaging a similar or related business on a non-discriminatory basis,

(d) related with any survival, travelling, entertainment or other allowance that denotes reimbursement only to the recipient of any amount consumed by him only in the production of his revenue from his employment or services provided,

(e) gains resulted upon using motor vehicle from which an employer cannot judge any deduction or relief in relation to the maintenance, possession, or operation of the vehicle,

(f) any profit gained as consequential upon using the residential premises by Government employee or any establishment whose budget is completely or substantially not from Government budget endowment,

[141] Sec. 7-(1)(2)(a)(b)(c)(d)(e)(f)(g)(h), The Income Tax Act No.6 of 2006 s.13 and Act No.7 of 1994 s.8.

(g) expense from providing passage of worker, his or her spouse till up to four of their children to or from an employment residence that resemble to the actual travelling cost where the worker is domiciled more than 20 miles from an employment residence and has only being employed for working to render the service of the employer at the employment residence,[142]

Regarding these provisions of charging an individual's income from an employment for a year of income, it is crucial for a government to strengthen the collections of the revenue from the same. This will be achieved by capturing all taxpayers from both public and private sectors, who are legally fall under the Act. This is because, among the chief challenge that hinder the collections of the tax revenue in Tanzania is the shadow income problem.[143]

Because of this problem, it is suggested that, so as to generate more revenue, the informal sectors, shadow income and underground economic activities by private sectors, businesses, private individuals and other tax stakeholders must be curbed by government in Tanzania. Also, strengthening the service sector in G.D.P, secondary sector like manufacturing, reviewing and reducing tax exemptions in the country, etc. (Table 12.0 Annexure VC; and Table 22.0 Annexure VM).

Also, fighting against tax evasion and avoidance must be prioritized by tax authorities i.e. Tanzania Revenue Authority and Zanzibar Revenue Board. Doing so, will enhance domestic tax revenue collections and performance in Tanzania.

4.6.2.3 Income from a Business

The Act has said that, the person's profits or gains from doing a business is the income from a business for that particular year of income. In calculating a person's gains or profits

[142] Sec. 7-(3)(a)(b)(c)(d)(e)(f)(g), The Income Tax Act No.2 of 2014 s.33 and Act No.5 of 2011 s.14.
[143] Interview with Mr. Juma T. Salumu, Assistant Manager Wharf, Customs Department, Tanzania Revenue Authority (T.R.A) (Zanzibar Office, February 01, 2018).

for doing a business in that particular year of income, based from the provisions of subsection (3), the following amounts derived by the person by doing such kind of a business must be added during that year of income:

(a) fees from service,

(b) revenues for trading routine,

(c) any profit from the realization of the assets or liabilities of the business as per the calculation under Division III of this Part,

(d) any vital amounts which must be added up according to the paragraph 4 of the Third Schedule resulting from the realization of the person's business depreciable assets,

(e) any amounts resulted as consideration for accepting a restriction on the capacity to conduct the business,

(f) whether gifts or any other *ex gratia* payments derived by the person for doing such a business,

(g) any amounts received under the condition of doing a business and on one way or another should be included in calculating the person's income from an investment, and

(h) other’s amounts required to be added up under Division II of this Part, Parts IV, V or VI.

Besides the above amounts must be included in calculating a person’s income from a particular business, on contrary, the following are excluded in calculating a person's gains or profits from conducting a business:

(a) any exemption plus final withholding payments, and

(b) amounts that must be added up in computing the person's income from any employment.[144]

Similarly, the above amounts derived by the person by doing businesses which must be added during a particular year of income must be effectively captured by government especially from private businesses and investors. Regarding these provisions, it is

[144] Sec. 8.-(1)(2)(a)(b)(c)(d)(e)(f)(g)(h),(3)(a)(b), The Income Tax Act, 2004.

recommended on more openness of exportation and importation of goods and services especially the major commodity groups in Tanzania, with affordable trade terms, less bureaucracy and allowing trade liberalization in Tanzanian economy. Since, there is long-run positive impact between the ratio of trade to G.D.P and the tax revenue in Tanzania (Table 10.0). Doing so, will enhance domestic tax revenue collections and performance in Tanzania.

4.6.2.4 Income from an Investment

The definition of a person's income from an investment for a year of income is the person's gains or profits from conducting the investment for that particular year of income. Similarly, as in the income from a business under the provisions of subsection (3), the following amounts received by the person from conducting an investment during that year of income must be included in calculating the person's gains or profits from conducting an investment for that a particular year of income:

(a) any dividend, distribution of a trust, gains of an insured from life insurance, gains from an interest in an unapproved retirement fund, interest, natural resource payment, rent, or royalty;

(b) net gains from the realization of investment assets of the investment as calculated under Division III of this Part;

(c) amounts derived as consideration for accepting a restriction on the capacity to conduct the investment; and

(d) other amounts required to be included under Division II of this Part, Parts IV, V or VI.

(3) In calculating a person's gains and profits from conducting an investment, the amounts shall be excluded, namely -

(a) exempt amounts and final withholding payments; and

(b) amounts that are included in calculating the person's income from any employment or business.[145]

[145] Sec. 9.-(1)(2)(a)(b)(c)(d),(3)(a)(b), The Income Tax Act No.15 of 2004 s.27.

In the same way, the above amounts received by the person from conducting an investment during that year of income which must be included in calculating the person's gains or profits from conducting an investment for that particular year of income. They must be effectively captured by government from investors.

Regarding these provisions, it is suggested that, both the government of United Republic of Tanzania and that of the Zanzibar must play supportive roles by investing in physical capital, human capital, institutional framework and infrastructures for the purpose of improving the environment of private sector development and sustainable economic growth. So, will enhance domestic tax revenue collections and performance in Tanzania.

4.6.3 TAX PAYMENT PROCEDURES

Part VII of this Act explain withholding obligations by employers, where withhold income tax from the payment upon making payment which must be added up during the calculation of the chargeable income which may support strengthening of domestic tax revenue collections in Tanzania. Therefore, upon strictly implementation of the withholding payments and obligations would help the nation in financing the recurrent and development expenditures, rather than depending from external finances like loans, aids, and grants.

4.6.3.0 Withholding Obligations by Employers

Based from the rate provided for in paragraphs 1 and 4(a) of the First Schedule, Section 81-(1) of the Act ask any resident employer to withhold income tax from the payment upon making payment which must be added up during the calculation of the chargeable income of his or her employee for a year of income.

Additionally, regarding that employer’s obligation of withholding income tax, according to subsection (1), an employer is not liable to extinguish or reduce from either the reasons, whether because of any other law that provides that an employee's income from employment shall not be reduced or subject to attachment or whether an employer has a right or is under an obligation to deduct and withhold any other amount from the payment.[146]

4.6.4 PROCEDURE APPLICABLE TO WITHHOLDING

4.6.4.0 Statements and Payments of Tax Withheld or Treated as Withheld

Under section 84.-(1) the Act has notified that, every withholding agent during the month is liable to pay to the Commissioner any income tax that has been withheld in accordance with Subdivision A only within seven days after the end of each calendar month. Hence, the law requires the agent just within 30 days after the end of each six-month calendar period to file with the Commissioner in the prescribed specifying manner here under:

(a) payments made by the agent during the period that only focus on withholding under Subdivision A,

(b) the name and address of the withholdee,

(c) income tax withheld from each payment, and

(d) any other information where the Commissioner may prescribe.

In addition to that, any withholding agent that fails to withhold income tax regarding with provisions under Subdivision A, by law he or she must pay the tax that should have been withheld in the same way and at the same time as tax that is withheld. Nevertheless, in case an agent fails to withhold income tax from a payment as required by Subdivision A:

(a) the withholdee will jointly and severally, be liable with the withholding agent for the payment of the tax to the Commissioner, and

(b) the tax will be payable by the withholdee inside seven days after the end of the calendar month from which the payment is received.

Moreover, under Subdivision A, an agent who withholds income tax and pays the tax to the Commissioner, will be treated as having paid the amount withheld to the withholdee for the purposes of any claim by the withholdee for payment of the amount withheld. Contrary, under the same provisions of Subdivision A, any withholding agent that fails to

[146] Sec. 81.-(1)(2), The Income Tax Act No. 2 of 2014 s.38.

withhold income tax but pays the tax that should have been withheld to the Commissioner based from subsection (3) will be entitled to recover an equal amount from the withholdee.[147]

4.6.5 INCOME TAX PAYABLE ON ASSESSMENT (METHODS OF ASSESSMENT)

4.6.5.0 Self-Assessment

Section 94.-(1) of the Act stated that, if an entity files a return of income for a year of income, an assessment will be treated as made on the due date for filing the return of:

(a) the income tax payable by the person for the year of income under the provisions of section 4(1)(a) and (b) within the amount shown in the return, and

(b) the amount of that tax that has to be paid for the year of income in the amount shown within the return which is the tax payable on the assessment.

Meanwhile, in case an entity is not required to file a return of income for a year of income or has absolutely failed, until such time as a return will be filed, an assessment will be preserved as made on the due date for filing the return that:

(a) the income tax payable by the person for the year of income

will be equal to the sum of any income tax withheld from payments received by the person during the year of income under the provisions of Division II and any income tax paid by the person by manner of instalment for the year of income based from the provisions of Division III of this Part, and

(b) there is no tax payable on the assessment.

Additionally, in the occasion an individual for any year of income has never filed a return whether or not he has been required by the Commissioner to do so, and the Commissioner considers that, such an individual has income chargeable tax for such year. Hence, according to the best of his judgement, the Commissioner has mandate to determine the amount of the income of that individual and assess the tax accordingly.

4.6.5.1 Adjusted Assessment

[147] Sec. 84.-(1)(2)(a)(b)(c)(d)(3)(4)(a)(b)(5)(6), The Income Tax Act, 2004.

This section has given mandate to the Commissioner to adjust an assessment made under the provisions of the sections 94, 95 or this section for the purpose of adjusting the assessed person's liability to tax, consisting of any tax payable on the assessment, in such a way that, using the Commissioner's best judgement and information that reasonably available, they will be consistent with the intention of this Act. Example, in accordance with the provisions of subsections (3) and (4), the Commissioner could adjust an assessment under subsection (1) within three years after:

(a) where an assessment under section 94(1) and (2) (including by reason of section 95(1)), the due date for filing the return of income to which the assessment relates, or

(b) where an assessment under section 95(2), the date on which the notice of assessment is served on the person assessed as required by section 97.

(c) If assessment relates to payment referred to in section 7(4) and (5) and where an assessment made under section 94(3) and (4), the date on which the notice of assessment is served on the person assessed as required by section 97.

Apart from that, the Commissioner at any time can adjust an assessment under subsection (1):

(a) If the person assessed has failed to file a return of income in accordance with section 91 and in case of an assessment under section 94 either with the intention of delaying or evading the payment of tax, or

(b) for any inaccurate assessment either on behalf of the assessed person or by reason of fraud.

Nevertheless, the Commissioner cannot change an amended assessment issued under the Tax Revenue Appeals Act, or where an assessment has been changed or reduced pursuant to an order of a court of competent jurisdiction unless the assessment or order is vacated. In this regard, an assessment will stop to have any effect in the degree where it is adjusted in accordance with this section.[148]

[148] Sec. 96.-(1)(2)(a)(b)(c)(3)(a)(b)(4)(5), The Income Tax Act, 2004.

4.6.6 THIRD PARTY LIABILITY (METHODS OF RECOVERY)

4.6.6.0 Recovery of Tax from Receiver

According to section 116.-(5) of this Act, "receiver" is any person who, with respect to an asset situated in Tanzania, is:

(a) a liquidator of an entity,

(b) a receiver chosen out of court or by a court in respect of an asset or entity,

(c) a trustee for a bankrupt person,

(d) a mortgagee in possession,

(e) an administrator or executor of a deceased individual's estate, or

(f) conducting the affairs of a debilitated individual, and "tax debtor" is the person whose assets come into the possession of a receiver.

In this regard, based from section 116.-(1), a receiver, within fourteen days of being appointed to the position of receiver or taking possession of an asset situated in Tanzania, whichever occurs first, in writing must notify the Commissioner. Hence, the Commissioner could serve a receiver with a notice in writing specifying an amount that appears in front of the Commissioner sufficiently to be provided for any tax that is due or shall become due by the tax debtor.

4.6.6.1 Recovery of Tax from Person Owing Money to Tax Debtor

This section, applies where tax is due by a person "the tax debtor" and when the tax debtor has failed to pay the tax on or before the date it is payable. In this regard, the Commissioner may by notice in writing require any person, the "payer":

(a) owing or who may subsequently owe money (any debt obligation denominated or payable in money) to the tax debtor,

(b) holding or who may subsequently hold money for or on account of the tax debtor,

(c) holding or who may subsequently hold money on account of a third person for payment to the tax debtor, or

(d) having mandate from a third person to pay money to the tax debtor, to pay and the payer will pay, on account of and to the amount of the tax due by the tax debtor, the money to the Commissioner on the date stated in the notice.

In case a payer within thirty days has failed to pay any amount of tax quantified in appointment notice of the date: (a) of service of such notice on him, or (b) on which any money comes into his hands or become due by him to his tax debtor, whichever event is the later, and the payer has:

(i) not given any notification in accordance with subsection (6) of this section, or

(ii) might be given such notification that has been rejected by the Commissioner,

Conclusively, all provisions of this Act connecting with the collection and recovery of tax would apply to the collection and recovery of such amount, as if it were tax due and payable by the payer, the due date for the payment of which was the date upon which such amount should have been paid by the Commissioner under this subsection.[149]

4.7 THE CASE LAW: ANALYSIS OF THE CASE ON TAX EVASION IN TANZANIA.

African Barrick Gold Plc now known as Acacia Plc due to this dispute ("*ABG*" or "the appellant") is a company headquarter in London, United Kingdom.[150] In the world, it owns several subsidiary companies including incorporation in Tanzania.[151] The Bulyanhulu Gold Mining Ltd. which operates the Bulyanhulu Gold Mine, North Mara Gold Mining Ltd. which operates the North Mara Gold Mine, and Pangea Minerals Ltd. which operates the Tulawaka and Bunzwagi Gold Mine, are subsidiary companies engaged in businesses.

[149] Sec. 117.-(1)(2)(a)(b)(c)(d)(3)(4)(a)(b)(5)(6)(7)(a)(b)(8)(9)(10)(a)(b)(i)(ii), The Income Tax Act, 2004 and Act No. 13 of 2008 s.16.

[150] Africa Barrick Gold Plc v. Commissioner General of The Tanzania Revenue Authority, TAX APPEAL NO. 16 OF 2015, 1, (In the Revenue Appeals Tribunal at Dar Es Salaam: In the Court of Appeal of Tanzania at Dar es Salaam). The Revenue Appeals Tribunal at Dar Es Salaam: The Court of Appeal of Tanzania at Dar es Salaam, here after referred as "RTCATD").

[151] Africa Barrick Gold Plc v. Commissioner General of The Tanzania Revenue Authority, TAX APPEAL NO. 16 OF 2015, 1, RTCATD.

Its office is at Plot No. 1736 Hamza Azizi/Kahama Road, Msasani Peninsula, Dar es Salaam, Tanzania where all activities are operated.[152]

Under a Certificate of Compliance, on 11th March, 2010, the appellant was registered with the Business Registration and Licensing Agency BRELA.[153] The *Commissioner General of the Tanzania Revenue Authority* by a notice issued under section 138 of the Income Tax Act, 2004, in November, 2012, initiated an inquiry on the tax affairs of *ABG*.[154]

After the investigation, it has been realised by the *Commissioner General* that, *ABG* was a resident of Tanzania carrying and earning income through business by providing management services to the three Tanzanian entities i.e. Bulyanhulu Gold Mining Ltd., North Mara Gold Mining Ltd., and Pangea Minerals Ltd. and other several exploration companies working in Tanzania. Also, *the Commissioner General* contented that, dividends paid to the appellant's off shore shareholders are directly connected to the income earned from Tanzania.[155] Hence, **they are required by *the Commissioner General* to withhold tax when paying dividends to its shareholders in the UK and elsewhere.[156]**

From the findings by *the Commissioner General* about the tax enquiry commenced in November, 2012, on 8th October, 2013, he issued a notice under Section 139 of the Income Tax Act, 2004, recited together with the Section 38 of the VAT Act, 2007 "VAT Act", approving that *ABG* had registered and issued with a Tax Identification Number (TIN-120-840-916) and VAT Registration Number (VRN 40-015846-L), pursuant to the provisions of Section 133 of the Income Tax Act, 2004, and Section 19 (4) of the VAT

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[152] Africa Barrick Gold Plc v. Commissioner General of The Tanzania Revenue Authority, TAX APPEAL NO. 16 OF 2015, 1, RTCATD.
[153] Africa Barrick Gold Plc v. Commissioner General of The Tanzania Revenue Authority, TAX APPEAL NO. 16 OF 2015, 1, 2, 3, RTCATD.
[154] Africa Barrick Gold Plc v. Commissioner General of The Tanzania Revenue Authority, TAX APPEAL NO. 16 OF 2015, 1, 2, 3, RTCATD.
[155] Africa Barrick Gold Plc v. Commissioner General of The Tanzania Revenue Authority, TAX APPEAL NO. 16 OF 2015, 1, 2, 3, RTCATD.
[156] Africa Barrick Gold Plc v. Commissioner General of The Tanzania Revenue Authority, TAX APPEAL NO. 16 OF 2015, 1, 2, 3, RTCATD.

Act.[157] Regarding the above Act, within days *the Commissioner General* required the company to comply with the following matters: -

One, filing the statutory returns as far as by the laws mentioned. Second, to send withholding taxes in the form of dividend payments for the period of four years starting from 2010 to 2013 amounting to USD 81,843,127 (the amount has been reduced to USD 41,250,426). However, interest and penalties should not be included in the payments. Third, to send withholding taxes on payments made to *Barrick Gold Corporation* with inclusion of others non-resident individuals in accordance with the services provided during the specified period, Pay As You Earn, Staff Development Levy from 2010 to September, 2013, together with stamp duty on instruments executed and that related to any business activities conducted within Tanzania.[158]

Actually, following *the Commissioner General's* tax demands, the appellant was not happy from the mechanism used in making them, the issuance of TIN and VRN forcibly, and the act of *the Commissioner General* to demand returns of personal income from its Dar es Salaam-based Vice President (Corporate Affairs), *Mr. Deodatus Mwanyika.*[159] On appeal to the Board, it allowed the appeal with regard to the demand for tax returns from *Mr. Mwanyika* personally. However, it found improper to demand information under Section 139 (1) (a) of the **Income Tax Act** 2004, and Section 38 of the VAT Act, 2007.[160] In the meantime, the Board dismissed the substratum of the appellant's appeal by agreeing with the respondent's positions on all the remaining points that found to be most crucial. In this regard, the respondent's income tax demand for United State Dollar 41,250,426 had confirmed.[161]

Undeterred, the appellant has filed this appeal, citing the following four grounds:

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[157] Africa Barrick Gold Plc v. Commissioner General of The Tanzania Revenue Authority, TAX APPEAL NO. 16 OF 2015, 1, 2, 3, RTCATD.

[158] Africa Barrick Gold Plc v. Commissioner General of The Tanzania Revenue Authority, TAX APPEAL NO. 16 OF 2015, 1, 2, 3, RTCATD.

[159] Africa Barrick Gold Plc v. Commissioner General of The Tanzania Revenue Authority, TAX APPEAL NO. 16 OF 2015, 1, 2, 3, 4, RTCATD.

[160] Africa Barrick Gold Plc v. Commissioner General of The Tanzania Revenue Authority, TAX APPEAL NO. 16 OF 2015, 1, 2, 3, 4, RTCATD.

[161] Africa Barrick Gold Plc v. Commissioner General of The Tanzania Revenue Authority, TAX APPEAL NO. 16 OF 2015, 1, 2, 3, 4, RTCATD.

Firstly, that, based from the law and fact, the Board has made mistaken that, for the purposes of tax payment, the company of the appellant has office residing and working in Tanzania. Secondly, the Board has made mistaken that, the demand of the respondent from the appellant regarding taxes was legally justified for the payment of the same. Thirdly, by law, the Board has made mistaken that, the Tax Identification Number TIN and Value Added Tax Registration Number VRN certificates issued by the respondent were legally, therefore the appellant was liable to file returns starting from the dates where the certificates were received. Finally, that, according to the laws, the Board has made mistaken in believing that, the respondent's act of requiring taxes under Section 139 (1) (a) of the Income Tax Act 2004, and Section 38 of the VAT Act, 2007 did not occasion injustice to the appellant side.[162]

By consent, the appeal has been argued by way of written submissions. The evidence of *Mr. Mwanyika* after *the Commissioner General* insisted that the office is headed by him and Group Vice President (Corporate Affairs), the appellant maintains that, the title is merely ceremonial and that *Mr. Mwanyika* has no decision-making powers, that he only carries out a co-ordination role, and that he is an employee of Bulyanhulu Gold Mining Ltd., not *ABG*. Furthermore, *Mr. Mwanyika* told the Board that, he is not paid any salary or allowances by *ABG*.[163]

Again, his further evidence was that, about 140 employees of *ABG's* Tanzanian subsidiaries assisted him in the co-ordination role, but, like him, they are not remunerated by *ABG*. Also, *Mr. Mwanyika* told the Board that, all three Tanzanian companies have been making losses and have never declared any dividends. However, he did not give any details of *ABG's* finances, argued that, the details could only be given by *ABG* UK. Hence, maintained that *ABG* is neither resident nor does it carry out any business in Tanzania.[164]

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[162] Africa Barrick Gold Plc v. Commissioner General of The Tanzania Revenue Authority, TAX APPEAL NO. 16 OF 2015, 1, 2, 3, 4, RTCATD.
[163] Africa Barrick Gold Plc v. Commissioner General of The Tanzania Revenue Authority, TAX APPEAL NO. 16 OF 2015, 1, 2, 3, 4, 5, RTCATD.
[164] Africa Barrick Gold Plc v. Commissioner General of The Tanzania Revenue Authority, TAX APPEAL NO. 16 OF 2015, 1, 2, 3, 4, 5, RTCATD.

The appellant's position is that, a certificate of compliance creates an obligation in respect of a matter associated with the regulation of the company by the Registrar of Companies, but does not create an obligation to obtain a Tax Identification Number for purposes of income tax or Value Added Tax Registration Number for VAT. The appellant denied it has any obligation in respect of *Mr. Mwanyika's* tax affairs since he is neither employed nor remunerated by it. However, *the Commissioner General* by several reasons insisted that, the appellant was a resident person for tax purposes.[165]

After going through long discussion, interpreting the meaning of some words and citing concrete examples related with the case, the question, then, is the case at hand involves a tax evasion as believed by *the Commissioner General?* Such that the Tribunal can be justified in endorsing the Board's approach in applying a purposive interpretation to Section 66 (4) (a) of the Income Tax Act, 2004? Regarding this juncture and the eyes of law, it was the duty of the appellant to prove that, it is not liable to taxation: ***Southcom East Africa Ltd. v. Commissioner General, Tanzania Revenue Authority***, TRAT Income Tax Appeal No. 18 of 2011.[166] It can only shift upon discharge of this primary burden of proof: ***Insignia Ltd. v. Commissioner General, Tanzania Revenue Authority***, CAT Civil Appeal No. 14 of 2007.[167]

Since, the Board noted that so far *Mr. Mwanyika* failed to provide that proof. Indeed, he told the Board that he had no details of *ABG's* finances, and that such details could only be given by "*ABG* UK".[168] In this scenario, it would be expected the appellant to produce such proof, because *Mr. Mwanyika* must prove the burden that, he is not liable to taxation.[169] Did the appellant discharge that burden? Could the evidence have brought to

[165] Africa Barrick Gold Plc v. Commissioner General of The Tanzania Revenue Authority, TAX APPEAL NO. 16 OF 2015, 1, 2, 3, 4, 5, RTCATD.
[166] Africa Barrick Gold Plc v. Commissioner General of The Tanzania Revenue Authority, TAX APPEAL NO. 16 OF 2015, 1, 2, 3, 4, 5, 15, 16, RTCATD.
[167] Africa Barrick Gold Plc v. Commissioner General of The Tanzania Revenue Authority, TAX APPEAL NO. 16 OF 2015, 1, 2, 3, 4, 5, 15, 16, RTCATD.
[168] Africa Barrick Gold Plc v. Commissioner General of The Tanzania Revenue Authority, TAX APPEAL NO. 16 OF 2015, 1, 2, 3, 4, 5, 15, 16, RTCATD.
[169] Africa Barrick Gold Plc v. Commissioner General of The Tanzania Revenue Authority, TAX APPEAL NO. 16 OF 2015, 1, 2, 3, 4, 5, 15, 16, RTCATD.

the attention of the Board, could assisted the appellant? With due respect, we do not think so. On the contrary, because the evidence on record firmly supports the Board's holding. Currently, we are explaining our position.[170]

By applying the purposive method of interpretation that have endorsed, the word "formed" in Section 66 (4) (a) of the Income Tax Act, 2004 can be interpreted to include *the registration of the company under the Act*.[171] In this regard, it also includes the issuance of the Certificate of Compliance under Section 453 of the **Companies Act**.[172] The date of that registration is the date of the certificate. Thus, however it does not amount to the incorporation (or re-incorporation, for that matter) of the company in Tanzania, it is precisely to conclude that registration amounted to the company's *formation* in Tanzania *as a foreign company*.[173] Another reason why the Board used to conclude that the appellant is a resident of Tanzania was the fact that, the appellant had a policy of holding at least one meeting of its Board of Directors every four years in Tanzania.[174] From this argument, on behalf of the appellant, it has been argued that:

Per Judge J., ("*It seems the decision of the Board rests on a single Board meeting held in 2011 and the title given to Mr. Mwanyika. On this note we wish to reiterate…as regards the ABG's meeting of 2011…that this cannot be a serious argument. The act of exercising management and control is a serious matter and denotes supervision of company operations and the making of management decisions on a continuous basis."*) (Africa Barrick Gold Plc v. Commissioner General of The Tanzania Revenue Authority, TAX APPEAL NO. 16 OF 2015, 1, 2, 3, 4, 5, 15, 16, 17, (RTCATD).

[170] Africa Barrick Gold Plc v. Commissioner General of The Tanzania Revenue Authority, TAX APPEAL NO. 16 OF 2015, 1, 2, 3, 4, 5, 15, 16, RTCATD.
[171] Africa Barrick Gold Plc v. Commissioner General of The Tanzania Revenue Authority, TAX APPEAL NO. 16 OF 2015, 1, 2, 3, 4, 5, 15, 16, 17, RTCATD.
[172] Africa Barrick Gold Plc v. Commissioner General of The Tanzania Revenue Authority, TAX APPEAL NO. 16 OF 2015, 1, 2, 3, 4, 5, 15, 16, 17, RTCATD.
[173] Africa Barrick Gold Plc v. Commissioner General of The Tanzania Revenue Authority, TAX APPEAL NO. 16 OF 2015, 1, 2, 3, 4, 5, 15, 16, 17, RTCATD.
[174] Africa Barrick Gold Plc v. Commissioner General of The Tanzania Revenue Authority, TAX APPEAL NO. 16 OF 2015, 1, 2, 3, 4, 5, 15, 16, 17, RTCATD.

Also, we agree with the appellant's position that, exercising control and management imply supervision of the company's operations, hence, making management decisions on a continual basis. The fact that, the company's Board of Directors irregularly meets in Tanzania or they have a permanent member of senior management in Dar es Salaam does not necessarily mean that its management is exercised in Tanzania.[175]

Nevertheless, in all fairness, that was not the only criterion the Board used in arriving at its conclusions. We would quote its holding, which runs thus:

Per Judge J., (*"The appellant counsel submitted that, the fact that the company conducted a meeting of the Board of Directors in 2011 is immaterial because other meetings were conducted in UK. With due respect, we do not buy that idea.* ***There is a lot of other independent activities in Tanzania…the appellant company recognizes Mr. Deo Mwanyika as being in the senior management team. He holds the position of the Vice President corporate affairs…and has a work force of 140 employees.****")* [Emphasis supplied]. (Africa Barrick Gold Plc v. Commissioner General of The Tanzania Revenue Authority, TAX APPEAL NO. 16 OF 2015, 1, 2, 3, 4, 5, 15, 16, 17, 18, 19, (RTCATD). The Board further held:

Per Judge J., (*"…It is our finding and decision that the entire Board sat in Tanzania 2011* ***and continual activities of the company under Mr. Deo Mwanyika, the staff under him…****make the company resident for purposes of tax under section 6 (4) (b) [sicI] of the Income Tax Act, 2004.")* [Emphasis supplied]. (Africa Barrick Gold Plc v. Commissioner General of The Tanzania Revenue Authority, TAX APPEAL NO. 16 OF 2015, 1, 2, 3, 4, 5, 15, 16, 17, 18, 19, RTCATD. Meanwhile, the statement has been stated in the Annual Reports and Accounts of ABG that caught the Board's attention:

Per Judge J., (*"Currently, all of ABG's mining operations are in Tanzania. We believe that Tanzania possesses significant mining potential.")* (Africa Barrick Gold Plc v.

[175] Africa Barrick Gold Plc v. Commissioner General of The Tanzania Revenue Authority, TAX APPEAL NO. 16 OF 2015, 1, 2, 3, 4, 5, 15, 16, 17, RTCATD.

Commissioner General of The Tanzania Revenue Authority, TAX APPEAL NO. 16 OF 2015, 1, 2, 3, 4, 5, 15, 16, 17, 18, 19, 20, 21 (RTCATD).
The ABG Report continued:

Per Judge J., (*"At present we have four gold producing mines, as in northern Tanzania. These are Bulyanhulu, Buzwagi, Tulawaka and North Mara".)* (Africa Barrick Gold Plc v. Commissioner General of The Tanzania Revenue Authority, TAX APPEAL NO. 16 OF 2015, 1, 2, 3, 4, 5, 15, 16, 17, 18, 19, 20, 21 RTCATD.

In these situations, it is fair to conclude that the respondent's argument that the transactions were simply a design created by the appellant aimed at tax evasion was justified.[176] Again, because are the only *ABG's* entities that carrying on business anywhere on Earth are the three Tanzanian gold-mining companies.[177]

Hence, the only revenue source that could create net profits or retained earnings would be the three Tanzanian companies (either one or more of them).[178] Since none of them was allegedly making any profits, and because the appellant has no other subsidiary anyplace in the world involve in business, it was compelled to conclude that at least one, if not all or more, of the appellant's three gold producing subsidiaries in Tanzania was making profit. We realize no other plausible explanation.[179]

Ultimately, the fact that, none of *ABG's* subsidiaries is declaring any profit that could afford its holding company with such huge net profits sufficient to distribute to its shareholders 4 years in a row is what in our respectful opinion constitutes the evidence of a sophisticated scheme of tax evasion by the appellant.[180] In these regards, this Tribunal

[176] Africa Barrick Gold Plc v. Commissioner General of The Tanzania Revenue Authority, TAX APPEAL NO. 16 OF 2015, 1, 2, 3, 4, 5, 15, 16, 17, 18, 19, RTCATD.
[177] Africa Barrick Gold Plc v. Commissioner General of The Tanzania Revenue Authority, TAX APPEAL NO. 16 OF 2015, 1, 2, 3, 4, 5, 15, 16, 17, 18, 19, RTCATD.
[178] Africa Barrick Gold Plc v. Commissioner General of The Tanzania Revenue Authority, TAX APPEAL NO. 16 OF 2015, 1, 2, 3, 4, 5, 15, 16, 17, 18, 19, RTCATD.
[179] Africa Barrick Gold Plc v. Commissioner General of The Tanzania Revenue Authority, TAX APPEAL NO. 16 OF 2015, 1, 2, 3, 4, 5, 15, 16, 17, 18, 19, RTCATD.
[180] Africa Barrick Gold Plc v. Commissioner General of The Tanzania Revenue Authority, TAX APPEAL NO. 16 OF 2015, 1, 2, 3, 4, 5, 15, 16, 17, 18, 19, 20, 21, RTCATD.

cannot accept to be relegated to a mere spectator, mesmerized by the moves of the appellant's game, oblivious of the end result.[181] These circumstances remind us on the wise words of Justice Benjamin Cardozo in *Re Rouss,* 116 N.E. 782 at 785, who stated: *Per* Judge J., *"Consequences cannot alter statutes, but may help to fix their meaning."* (Africa Barrick Gold Plc v. Commissioner General of The Tanzania Revenue Authority, TAX APPEAL NO. 16 OF 2015, 1, 2, 3, 4, 5, 15, 16, 17, 18, 19, 20, 21 RTCATD.

We are thus of the respectful view that the Board was eligible to go beyond the mere plain meaning of the provisions of Section 66 (4) (a) of the Income Tax Act, 2004.[182] The circumstances fully justified the application of the purposive approach rule in construction of tax statutes as promulgated by Lord Wilverforce in *W.T. Ramsay* and elaborately explained by Lord Browne-Wilkinson in *McGuckian*.[183] Therefore, after knowingly the fact about true source of the dividends that ABG was able to pay to its shareholders for 4 consecutive years. Thus, the Board took the correct view of the law.[184]

Therefore, based from the grounds of the appeal, it is justifiable for the Commissioner General to invoke his powers under Section 133 (2) of the **Income Tax Act, 2004** and Section 19 (4) of the VAT Act, 2007 to register the appellant under the two Acts and hence issuing it with Tax Identification Number and Value Added Tax Registration Number Certificates.[185] Ultimately, the Board found no merit in this appeal. Hence**,** they dismiss it with costs.[186]

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[181] Africa Barrick Gold Plc v. Commissioner General of The Tanzania Revenue Authority, TAX APPEAL NO. 16 OF 2015, 1, 2, 3, 4, 5, 15, 16, 17, 18, 19, 20, 21, RTCATD.
[182] Africa Barrick Gold Plc v. Commissioner General of The Tanzania Revenue Authority, TAX APPEAL NO. 16 OF 2015, 1, 2, 3, 4, 5, 15, 16, 17, 18, 19, 20, 21, RTCATD.
[183] Africa Barrick Gold Plc v. Commissioner General of The Tanzania Revenue Authority, TAX APPEAL NO. 16 OF 2015, 1, 2, 3, 4, 5, 15, 16, 17, 18, 19, 20, 21, RTCATD.
[184] Africa Barrick Gold Plc v. Commissioner General of The Tanzania Revenue Authority, TAX APPEAL NO. 16 OF 2015, 1, 2, 3, 4, 5, 15, 16, 17, 18, 19, 20, 21, RTCATD.
[185] Africa Barrick Gold Plc v. Commissioner General of The Tanzania Revenue Authority, TAX APPEAL NO. 16 OF 2015, 1, 2, 3, 4, 5, 15, 16, 17, 18, 19, 20, 21, RTCATD.
[186] Africa Barrick Gold Plc v. Commissioner General of The Tanzania Revenue Authority, TAX APPEAL NO. 16 OF 2015, 1, 2, 3, 4, 5, 15, 16, 17, 18, 19, 20, 21, RTCATD.

4.7.0 <u>THE RELEVANCE OF THE CASE LAW</u>

This case law relates with the case of tax evasion made by the Acacia Plc ("ABG" or "the appellant") company, following of failure to comply with the Section 133 (2) of the **Income Tax Act, 2004** and Section 19 (4) of the VAT Act, 2007**,**[187] that vested ***Commissioner General Tanzania Revenue Authority*** with the power to register the appellant under the two Acts and hence issuing it with Tax Identification Number and Value Added Tax Registration Number Certificates.

Apart from the two Acts, the case also connected with the Part III of the income tax base, subdivision B of the chargeable income, of the Income Tax Act, CAP 332 (R.E 2014) stating that, for a year of income, the Act has categorized the chargeable income of a person from any employment, business or investment regarding whether a resident person, a non-resident person or a resident corporation.[188] Where in this case the Board took the correct view of the law that, ABG for four consecutive years was residing in Tanzania and that was able to pay to its shareholders for the years specified.[189]

Also, it is connected with the research finding of specific objective number four which revealed that, in the long-run, tax revenue in Tanzania is negatively significantly affected by tax base (Table 10.0). In this regard, it is recommended that, the fighting against tax evasion and avoidance must be prioritized by Tanzania Revenue Authority and Zanzibar Revenue Board. The target is to capture those taxpayers who are not yet captured (i.e. solving shadow income problem) throughout economic activities including mining sector in the country (Table 12.0 Annexure VC; and Table 22.0 Annexure VM).

Therefore, the revenue that will be collected from the tax evaders and the uncaptured taxpayers would help the country to finance itself as far as the recurrent and development

[187] Africa Barrick Gold Plc v. Commissioner General of The Tanzania Revenue Authority, TAX APPEAL NO. 16 OF 2015, 1, 2, 3, 4, 5, 15, 16, 17, 18, 19, 20, 21, RTCATD.
[188] Sec. 6.-(1)(a)(b)(c),(2), The Income Tax Act, 2004.
[189] Africa Barrick Gold Plc v. Commissioner General of The Tanzania Revenue Authority, TAX APPEAL NO. 16 OF 2015, 1, 2, 3, 4, 5, 15, 16, 17, 18, 19, 20, 21, RTCATD.

spending of the nation, instead of depending from foreign sources like loans, aids and grants.

Likewise, the findings of this research under the variable of macro-economic policies in Tanzania (Table 15.0 Annexure VF), has revealed that, Tanzania finances 60 percent of the budget, while the remaining 40 percent comes from the external finance, e.g. aid, loans, grants, etc., since among other reasons it also contributed by tax evasion problem.[190] Therefore, fighting against the problem is the most important step towards the better domestic tax collection performance in the country.

Also, it is founded that, the revenue collected by Tanzania Revenue Authority and Zanzibar Revenue Board from F.D.I and domestic investment and mining companies like that of the Acacia Plc ("ABG" or "the appellant") company is required to be reported to the authorities on time, doing so will enable avoiding tax evasion problem in the country (Table 16.0, Annexure VG).

Again, this case is relevant and connected with research economic recommendations regarding the ways for solving tax evasion and avoidance problem in Tanzania. Among them are, lower to zero rates on goods imported to Zanzibar "Freeport" must be adjusted, while both corruption and administrative constraints "bureaucracy" at entry points must be controlled effectively in the nation.[191]

In the meantime, the relevant of the case is valid since under legal recommendations is recommended that, for the Income Tax Act of 2004, section 9 which state that, the gains made on an investment are included in taxable income and the section 36 that sets out how the gain is calculated.[192] The sections should be amended so as to capture the gains

[190] *Supra* note 252.
[191] Edwin Temu, *FACTORS UNDERMINING TAX REFORMS IN TANZANIA: A CASE OF LARGE TAXPAYERS,* 4 (Degree of Master of Science in Finance and Accounts (MSc-A&F) of Mzumbe University Dar es Salaam Campus College, 2014).
[192] *Supra* note 136.

made during the transfers of shares of non-Tanzanian companies like that of the Acacia Plc ("ABG" or "the appellant") company.

Therefore, The Income Tax Act 2004, must be reviewed so as to acquire the gains from the off shore indirect transfers of interest from mineral assets.[193] In the time being, there is a need to increase capacity building for the management and advancement of the mining sector, example the innovation and installation of specialized revenue forecasting models.[194]

Also, regarding the current withholding tax, it is recommended that, the provisions should not only apply to the payments by Tanzanian resident companies, but also to non-resident companies.[195] Doing that, will assist Tanzania Revenue Authority to find out their share dealings that occur in others countries like UK where the Acacia Plc ("ABG" or "the appellant") company has headquarter in London, other than where a holding company discloses them publicly. Hence, it is very recommended to include any change in material interest in the Mining Act, 2010 or Mining Development Agreement or any other enforcing Act.[196]

Similarly, they are required to be reported to the Tanzanian authorities consequently. It is also recommended on the role of enforcement, supervision, monitoring and evaluation of the rules of the mining companies so as to overcome tax evasion problem in the country. Hence, strengthening the capacity building for the management and advancement of the mining sector in the country is most crucial. Doing so, will help government to collect more funds from the tax evaders, hence, boosting the country's tax revenue performance.

Further, so as to stimulate the role of private sectors, businesses, and others tax stakeholders, e.g. the Acacia Plc ("ABG" or "the appellant") company in implementing their role towards payment of tax in Tanzania. The country's tax payment system must

[193] *Id*.

[194] *Id*.

[195] *Id*.

[196] *Id.*

be affordable, simple, fair and transparent.[197] Together are the important suggestions which must be fulfilled so to rise and stimulate the domestic tax revenue performance in Tanzania.

There is a need to establish an instrument, example the bar council that would have ability to effectively and efficiently mobilizing unlawful practices[198] by private sectors, businesses, private individuals and others tax stakeholders, such as the Acacia Plc ("ABG" or "the appellant") company. Thus, it will enhance the intense legislative oversight of corruption to tax authorities, tax stakeholders, judicial practices, and the courts system of Tanzania, etc. Hence, will help to curb all means of corruption among the important tax stakeholders. Therefore, enhancing the domestic tax revenue performance in the country.

Also, in order to avoid inconveniences, government must hold equity in mining activities, including from the Acacia Plc ("ABG" or "the appellant") company. This will help the government to effectively control and supervise production of national resources. Also, government could precisely assess the production and income from the mines as well as related operating cost structure.[199] Thus, it is recommended to the government to own a percentage shares and enhance the full control of production, income, orientation of the mining sector, sales and operating costs. Apart from equity participation, government could also gather information via the oversight function of the government. Meanwhile, the others options such as the special mining tax, progressive royalties, windfall tax and resources rent tax are provided to the government.[200]

It is also recommended that, among the appropriate reforms to be made so as to stimulate the tax revenue collections or performance in Tanzania are to broad the tax base by curbing tax evasion, tax avoidance and enhancing the external competitiveness. Thus, helping fighting against tax evasion in the land. That is, when the tax base has broadened, the economic efficiency would be attained and the productive capacity of the economy would be at peak, absolutely, a peak tax revenue collection would be achieved in

[197] *Supra note* 29, at XII.
[198] *Supra* note 136.

[199] *Id*, at 14.

[200] *Id.*

Tanzania (Table 32.0, Annexure VR). For more information about the reforms refer Appendix II and III (pg. 23 & 21-22), respectively.

Also, it is suggested that, the mobilizations of tax revenue by enhancing internal factors like that of collecting taxes from mining company, example, the Acacia Plc ("ABG" or "the appellant") company rather than external factors should be the prerequisite policy objectives in Tanzania. Since, the study reveal that, the tax revenue performance within the country is mostly driven by internal factors rather than external factors like foreign loans, aids and grants.[201]

It is also recommended on the facilitation conditions for formalization of informal businesses and enterprises (Table 33.0, Annexure VS).[202] For more information about the suggestions, refer Annexure II and III (pg. 23-24 & 22), respectively. Doing so, will enable the tax authorities to capture every taxpayers who has not yet captured from the shadow economic activities through curbing tax evasions and avoidance in Tanzania. Therefore, will boost the domestic tax revenue collections and performance in Tanzania.

Additionally, there are number of cases filed and reported to the high court of Tanzania by tax authorities against taxpayers regarding tax evasion and avoidance, unrecovered revenue or not paid revenue.[203] Also, it has been confirmed that, some Tanzania Revenue Authority staffs have been fired from their jobs because of involving in corruption practices.[204] All of these practises resemble with the case law of the Acacia Plc ("ABG" or "the appellant") company where ultimately contributes to the loss of tax revenue collections in the land.

Based from the above analysis, findings, discussions, suggestions and the recommendations, it clearly depict that, the case law has a great role to play since it

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[201] *Supra* note 26.

[202] Derived from the comments written in the questionnaire number 10 of the B.o.T staff, the comment was on Section G(g) about general suggestions and conclusion (Refer to Appendix II & III (pg. 23-24 & 22)) respectively, 2018.

[203] *Supra* note 230.

[204] *Id.*

describes the real picture on how the tax evasion and avoidance problem influences the domestic tax revenue collections and performance in Tanzanian economy. Therefore, the fighting against tax evasion and avoidance must be prioritized for Tanzania Revenue Authority and Zanzibar Revenue Board (Table 12.0 Annexure VC; and Table 22.0 Annexure VM).